IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No.628 of 2000

Decided on:October 29, 2007.

State of H.P. **…Appellant.**

VERSUS

Rajinder Kumar & Anr. **….Respondents.**

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant: **Mr.Virender Verma, Addl.A.G.**

For the respondents: **Mr.Anoop Rattan, Advocate.**

Kuldip Singh, Judge (Oral)

The State has assailed the judgment dated 4.7.2000 passed by learned Additional Chief Judicial Magistrate, Una in case No.113-III-96/94 acquitting the respondents under Sections 41, 42 of the Indian Forest Act and under Rule 20 of the Himachal Pradesh Forest Produce Transit (Land Routes) Rules, 1978 in F.I.R. No.309/93 registered at Police Station, Una.

2. The facts, in brief, are that on 27.6.1993 a police party headed by A.S.I. Kishan Chand stopped tractor trolley bearing registration No.HP-20-0711 at about 10 p.m. near Rakkar Colony. On checking, the tractor trolley was found carrying 53 logs of Simbal, respondent No.2 was driving the tractor and respondent No.1 was

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Whether the reporters of the local papers maybe allowed to see the judgment? Yes

sitting on the tractor. On checking, the respondents produced slip Ext.PA/1, according to which, the respondents were permitted to carry 29 logs of wood whereas they were transporting 53 logs of wood in the tractor trolley. The respondents could not produce any permit for transporting 53 logs in the tractor trolley, therefore, *Ruka* was sent to the Police Station on the basis of which F.I.R. No.309/93 was registered against the respondents. The police completed the investigation and during investigation it was found that Sangram Singh who was having permit for 29 logs had loaded his 29 logs in the tractor trolley for carrying them to saw mill but respondents dishonestly removed 24 more logs of Sangram Singh and loaded those logs in the said tractor trolley without any licence or permit. Thus, the respondents were carrying 24 logs more in tractor trolley without any licence or permit. The police ultimately filed challan in the Court and notice of accusation was put to respondents under Sections 41, 42 of the Indian Forest Act and Rule 20 of the Himachal Pradesh Forest Produce Transit (Land Routes) Rules, 1978. The prosecution examined 11 witnesses and the evidence of the prosecution was closed by the order of the Court. The respondents were examined under Section 313 Cr.P.C., they pleaded their innocence but they did not lead any evidence in defence. The learned trial Court acquitted the respondents, hence, the State is in appeal.

3. I have heard the learned Additional Advocate General for the State, Mr.Anoop Rattan, Advocate for the respondents and gone

through the record. The learned Additional Advocate General has submitted that the prosecution has proved the case against the respondents beyond reasonable doubt. The trial Court has mis-interpreted the material on record and has erred in acquitting the respondents. The learned counsel for the respondents has supported the impugned judgment.

4. PW-1 Sukhdev Singh has demarcated Khasra Nos.2518, 2558 and 2736. PW-2 Constable Harish Kumar has stated that on 27.6.1993, a police party headed by A.S.I. Kishan Chand at 10 p.m. stopped and checked tractor bearing registration No.HP-20-0711 and at that time Harinder Pal was driving the tractor and Rajinder Kumar was sitting on the tractor. On search, 53 logs of Simbal were found in the tractor trolley and respondents had shown only a slip which was only valid for carrying 29 logs. In cross examination, he has stated that the logs were not unloaded from the tractor and the logs were counted with the help of torch. He has also stated that there were residential houses near the place of occurrence. PW-3 Joginder Singh, Patwari, is a formal witness. PW-4 Head Constable Balbir Chand has supported PW-2 Constable Harish Kumar. In cross examination, he has also admitted that there were shops and residential houses near the place of occurrence but he contradicted PW-2 by stating that logs were unloaded on the spot. The police prepared the papers in tube light. PW-5 Chur Singh has stated that he and Daulat Ram had cut three trees from the land of Sangram Singh and converted them into 29 logs which were loaded in the

tractor trolley. PW-6 Jagat Ram, Deputy Ranger, has proved *Parcha Hamrahi* Ext.PA/1 for carrying 29 logs to saw mill at Mehatpur. PW-7 has proved F.I.R. Ext.PW-7/A. PW-8 Sangram Singh has not supported the prosecution. He was declared hostile and was cross examined at length but nothing could be extracted in his cross examination favouring the prosecution. PW-11, Inspector Kishan Chand, has supported the prosecution case.

5. As per prosecution case, the respondents were having permit only for carrying 29 logs but they were carrying 53 logs when the tractor trolley was checked, thus, the respondents were carrying 24 logs more in the tractor trolley. It is also the case of the prosecution that respondents removed 24 logs from the possession of PW-8 Sangram Singh without his consent. PW-8 Sangram Singh has appeared as prosecution witness but did not support the prosecution story. PW-8 has nowhere stated that respondents had removed 24 logs from his possession without his consent. It has come in evidence that at the place of alleged occurrence there were residential houses and shops but no independent witness was joined at the time of recovery nor any worth believing explanation has been given as to why independent witnesses were not joined when the tractor trolley was checked. There are material contradictions regarding the counting of logs. PW-2 Harish Kumar in his cross examination has stated that the logs were not unloaded from the tractor trolley and they were counted in the trolley itself. However, PW-4 Balbir Chand has stated that the logs were unloaded from the

tractor trolley and thereafter those were counted away from tube light. PW-11 Kishan Chand, Investigating Officer, has stated that there was no street light at the place of occurrence. There are material contradictions regarding the recovery of logs when the tractor trolley was checked which have been noticed by learned trial Court. The learned Additional Chief Judicial Magistrate has appreciated the material on record and has taken a possible view therefrom. No case for interference has been made out. Hence, the appeal is dismissed. Bail bonds, furnished by the respondents, are discharged.

October 29, 2007. ***(Kuldip Singh), J.***

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